

MICHIGAN SUPREME COURT



Office of Public Information

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FOR IMMEDIATE RELEASE

STANDARD FOR DRUNK DRIVING DEATH CONVICTIONS TO BE ARGUED BEFORE MICHIGAN SUPREME COURT NEXT WEEK

LANSING, MI, May 3, 2005 – When a drunk driver kills another person, must the driver’s intoxicated driving be “a substantial cause” of the victim’s death in order for the driver to be convicted of OUIL (operating under the influence of liquor) causing death? That is the question the Michigan Supreme Court will consider next week in the final scheduled oral arguments of the Court’s 2004-2005 term.

In *People v Large*, the defendant argued that he could not have avoided the collision that killed an 11-year-old girl, even if he had been sober. In *People v Schaefer*, the defendant contended that an exit ramp’s design was at fault for the accident in which his companion died. The trial court in *Large* refused to bind over the defendant over on the OUIL causing death charge; that decision was ultimately upheld by the Michigan Court of Appeals. In *Schaefer*, the Court of Appeals vacated the defendant’s conviction for OUIL causing death and remanded the case for a new trial. In so doing, the courts cited a 1996 decision of the Michigan Supreme Court, *People v Lardie*, in which a majority of the Court concluded that, for a defendant to be convicted of OUIL causing death, the defendant’s intoxicated driving must have been a “substantial cause” of the victim’s death. In addition to other issues, prosecutors will ask the Court to reconsider *Lardie*.

The Court will also be asked to determine whether a provision in the state’s Public Health Code allows an osteopathic doctor to sue a hospital that denied his application to join the hospital’s surgery department as a staff physician. At issue in *Fisher v W.A. Foote Memorial Hospital* is a provision that a hospital “... shall not discriminate in the selection and appointment of individuals to the physician staff of the hospital or its training programs on the basis of licensure or registration or professional education as doctors of medicine, osteopathic medicine and surgery, or podiatry.” The plaintiff asserts that the statute gives him grounds for a private cause of action against the hospital. The Court of Appeals, however, disagreed and upheld a lower court’s dismissal of the doctor’s claim.

Also before the Court is *Reed v Yackell*, in which the defendants seek to overturn their portion of a \$1,256,320 jury verdict against them. The plaintiff was injured in an accident while helping another man make deliveries for a retail food marketer. The defendants argue that the plaintiff, who was paid under the table for his services, was an employee of the company. Accordingly, he is limited to the remedies provided by the Worker’s Disability Compensation Act and may not sue the company or its employee for his injuries, the defendants maintain.

Lower courts have found that the plaintiff was an independent contractor and could therefore sue.

Court will be held on **May 10**; the Court will convene at **9:30 a.m.** Oral arguments will be heard in the Supreme Court courtroom on the sixth floor of the Michigan Hall of Justice, located at 925 W. Ottawa in Lansing.

(Please note: The summaries that follow are brief accounts of complicated cases and may not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. Briefs in the cases are available on the Supreme Court's website at http://courts.michigan.gov/supremecourt/Clerk/msc_orals.htm. For further details about the cases, please contact the attorneys.)

Tuesday, May 10, 2005
Morning Session Only

PEOPLE v SCHAEFER (case no. 126067)

Prosecuting attorney: Timothy A. Baughman/(313) 224-5792

Attorney for defendant David William Schaefer: Richard W. Glanda/(313) 255-5262

PEOPLE v LARGE (case no. 127142)

Prosecuting attorney: Jerrold Schrottenboer /(517) 788-4283

Attorney for defendant James Richard Large: Robert K. Gaecke, Jr./ (517) 782-9451

Trial court: Wayne County Circuit Court (*Schaefer*, case no. 126067); Jackson County Circuit Court and 12th District Court (*Large*, case no. 127142)

At issue: An intoxicated person who operates a motor vehicle upon a highway and “by the operation of that motor vehicle causes the death of another person” is guilty of the crime of OUIL (operating under the influence of liquor) causing death, MCL 257.625(4). Does this statute require proof that the defendant’s intoxicated driving was a “substantial cause” of the victim’s death, as this Court held in *People v Lardie*, 452 Mich 231 (1996)? Is the statute constitutional?

Background: Defendant David William Schaefer drank while socializing with a friend; Schaefer then decided to drive his friend to another location. Eyewitnesses reported that Schaefer was driving erratically and tailgating other vehicles. At one point, Schaefer swerved abruptly onto a highway exit ramp. His vehicle hit the curb, and he lost control. The vehicle rolled over several times; Schaefer’s friend was ejected from the vehicle and killed. Three hours after the accident, Schaefer’s blood alcohol content was .16, above the legal limit. He was charged with OUIL causing death and negligent homicide. At trial, Schaefer argued that the accident happened because the exit ramp was defectively designed, and he presented an expert who testified in support of this theory. The jury convicted Schaefer as charged. In the Court of Appeals, Schaefer’s attorney objected that the jury was not properly instructed. In a two-to-one decision, the Court of Appeals vacated Schaefer’s conviction for OUIL causing death and remanded for a new trial. The prosecutor appeals.

On July 16, 2003, defendant James Richard Large struck and killed an 11-year-old girl on a bicycle as she rode into the street. Just before the accident, Large was traveling eastbound in his truck on Cain Road, in Jackson County. His blood alcohol level was .10, and he was driving

60 or 65 miles per hour in a 55 mile-per-hour zone. The prosecutor's accident-reconstruction expert testified that Large could not have avoided the collision, even if he had not been speeding. The district court refused to bind over Large on the charge of OUIL causing death, although the court did bind over Large on the charge of involuntary manslaughter. The circuit court affirmed as to the charge of OUIL causing death and quashed the charge of involuntary manslaughter. The Court of Appeals affirmed the circuit court's ruling. The prosecutor appeals.

FISHER v W.A. FOOTE MEMORIAL HOSPITAL (case no. 126333)

Attorney for plaintiff Lowell R. Fisher, D.O.: Philip Green/(734) 665-4036

Attorney for defendant W. A. Foote Memorial Hospital: Susan Healy Zitterman/(313) 965-7905

Attorneys for amicus curiae American Osteopathic Association, Michigan Osteopathic Association, and American College of Osteopathic Surgeons: Robert L. Weyhing, III, Paul C. Smith/(313) 965-8300

Trial court: Jackson County Circuit Court

At issue: The plaintiff, a board-certified osteopathic surgeon, applied for privileges with the defendant hospital's surgery department. The department denied his application, based on its requirement that a staff physician must have completed a certain type of residency program; the department also requires a staff physician to have an allopathic board certification. The plaintiff sued, alleging that the defendant discriminates against osteopathic surgeons in violation of MCL 333.21513(e), part of the Public Health Code. Does this statute give the plaintiff a private cause of action against the hospital?

Background: Plaintiff Lowell R. Fisher, a licensed osteopathic surgeon, applied for staff privileges with defendant W.A. Foote Memorial Hospital's department of surgery. To be eligible as a staff physician in that department, a candidate must have successfully completed a residency training program approved by the Accreditation Council for Graduate Medical Education (ACGME). The surgery department also required that a candidate be certified, or eligible to be certified, by the American Board of Surgery. This certification policy places the burden on the applicant to establish that his or her education, training, experience and competence is equivalent to ACGME training and certification. The hospital's board of trustees denied Fisher's request for a waiver of these requirements; the board concluded that his training and experience did not meet the specified criteria. Fisher then sued the hospital, claiming that the hospital illegally discriminated against him based on his status as an osteopathic physician and contrary to a provision of the Public Health Code (MCL 333.21513(e)). The statute provides in part that a hospital "... shall not discriminate in the selection and appointment of individuals to the physician staff of the hospital or its training programs on the basis of licensure or registration or professional education as doctors of medicine, osteopathic medicine and surgery, or podiatry." The trial court granted summary disposition in favor of the hospital and dismissed Fisher's claim on the ground that a hospital's staffing decisions were not subject to judicial review. The trial court also held that Fisher failed to establish that he was subjected to discriminatory treatment based on his status as an osteopath, in light of the evidence that the hospital regularly awarded staff privileges to osteopathic physicians. The Court of Appeals affirmed the trial court's ruling, but for a different reason. It held that MCL 333.21513(e) does not create a private cause of action. Fisher appeals.

REED v YACKELL, et al. (case no. 126534)

Attorney for plaintiff Ricky Reed: Larry A. Smith/(248) 358-3920

Attorney for defendants Buddy Lee Hadley, Gerald Michael Herskovitz and Mr. Food, Inc.: Hal O. Carroll/(248) 312-2800

Attorney for amicus curiae Workers' Compensation Section of the State Bar of Michigan: Martin L. Critchell/(313) 961-8690

Trial court: Wayne County Circuit Court

At issue: The plaintiff was hurt in an automobile accident while delivering food for the defendants. The defendants argue that the plaintiff is an "employee" within the meaning of the Worker's Disability Compensation Act ("WDCA"), MCL 418.161, and that he cannot bring a tort claim against his employer. The lower courts disagreed, holding that the plaintiff is an independent contractor and could therefore sue the defendants. Are the lower courts correct?

Background: Mr. Food, a retail marketer of meat products, employed Buddy Lee Hadley. On December 10, 1998, Hadley was driving Mr. Food's cargo van, making deliveries. Ricky Reed was also in the van. Reed had been fired by Mr. Food five months earlier, but he occasionally helped with deliveries in exchange for receiving cash under the table. Another vehicle driven by Linda Susan Yackell went through a red light and collided with the Mr. Food van. Reed was injured; he sued Yackell, Hadley, Mr. Food, and Gerald Herskovitz, the owner of Mr. Food. The jury returned a unanimous verdict and awarded Reed \$1,256,320; the jury found Yackell 60 percent at fault and the other defendants 40 percent at fault. Yackell did not appeal but the other defendants challenged the jury verdict, arguing that Reed was an "employee" of Mr. Food and therefore barred from bringing a tort suit by the exclusive remedy provision of the WDCA. The trial court did not agree, concluding that Reed was an independent contractor and was therefore eligible to bring a tort suit. The Court of Appeals affirmed, but the Supreme Court vacated that court's decision and remanded the case to the trial court for consideration of additional issues. On remand, the trial court again concluded that Reed could pursue a tort claim against defendants. The Court of Appeals affirmed the trial court's ruling. The defendants appeal.

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